IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 426 OF 2006

M/s Vinitha Associates Pvt. Ltd.,
rep. by its Director
8/1, Cenotaph Road
Ist Lane
Teynampet, Chennai-18 ... Petitioner.

Vs.

A.M.Srinivasan ... Respondent

The Civil Revision petition is filed against the fair and decretal order dated 18.1.2006 in I.A.No.13005 of 2005 in O.S.No.6081 of 1996 on the file of First Assistant City Civil Judge, Chennai.

For petitioner: Ms.Aruna Ganesh
For Respondent: No appearance

O R D E R

Challenge is made to an order of the First Assistant City Civi Judge,Chennai made in I.A.No.13005 of 2005 in O.S.No.6081 of 1996.

2. The Court heard the learned counsel for the revision petitioner.

3. Despite service of notice and the appearance of the counsel, no representation is made on behalf of the respondent, when the matter is taken up for enquiry.

4. It was the suit for recovery of money for a sum of Rs.6 lakhs and odd. along with interests and costs. After filing the written statement, necessary issues were framed and the suit was posted on 22.3.1999 for final hearing. But on the said date, due to non-appearance of the defendant and also non-representation by the counsel, an exparte decree came to be passed. The Instant

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application was filed in July,2005 to condone the delay of 2264 days in making the application to set aside the order of ex-parte decree. On enquiry, learned Assistant City Civil Judge, though it fit to allow the application with a condition that the petitioner shall pay a sum of Rs.500/- towards costs which is challenged by the petitioner herein.

5. Learned counsel for the petitioner would submit that the reasons adduced for excusing the inordinate and inexcusable delay is that he has given instructions to the counsel, but the counsel did not represent before the Court hence the delay must be condoned. No sufficient cause is shown for setting aside the decree.

6. After hearing the learned counsel for the petitioner, this Court is of the considered opinion that the order of the lower court should be sustained. It is true that the defendant has filed the application for setting aside the exparte decree with an inordinate and huge delay. The allowing of the the set aside application by awarding the costs of Rs.500/- will not in any way prejudice to the plaintiff. But, at the same time, this Court is of the considered opinion that once the issues have been framed and the case is posted for trial, an opportunity should be given to the defendant to put forth his case. Hence, the order of the lower Court is modified and the defendant/respondent is hereby directed to deposit 50% of the total amount of the claim before the Court below within a period of eight weeks from the date of receipt of a copy of this order and non-compliance of the above order will result in setting aside the impugned order of the lower Court.

7. With the above observation, the Civil Revision Petition is disposed of accordingly. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

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To

1. First Assistant City Civil Judge, Chennai.

2. The Registrar
City Civil Court, Chennai.

1 cc to Ms. Aruna Ganesh, Sr. 34067

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MRD (CO)
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